

1 DANIEL J. BERGESON, Bar No. 105439  
[dbergeson@be-law.com](mailto:dbergeson@be-law.com)  
2 JOHN W. FOWLER, Bar No. 037463  
[jfowler@be-law.com](mailto:jfowler@be-law.com)  
3 MELINDA M. MORTON, Bar No. 209373  
[mmorton@be-law.com](mailto:mmorton@be-law.com)  
4 BERGESON, LLP  
303 Almaden Boulevard, Suite 500  
5 San Jose, CA 95110-2712  
Telephone: (408) 291-6200  
6 Facsimile: (408) 297-6000

7 Attorneys for Plaintiff  
VERIGY US, INC.  
8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 VERIGY US, INC, a Delaware Corporation  
13 Plaintiff,  
14 vs.  
15 ROMI OMAR MAYDER, an individual;  
WESLEY MAYDER, an individual; SILICON  
TEST SYSTEMS, INC., a California Corporation;  
and SILICON TEST SOLUTIONS, LLC, a  
California Limited Liability Corporation,  
inclusive,  
16 Defendants.  
17  
18

19 Case No. C07 04330 RMW (HRL)

20 **VERIGY'S SUPPLEMENTAL CASE  
MANAGEMENT STATEMENT**

21 Judge: Honorable Ronald M. Whyte  
Ctrm: 6  
22  
23  
24  
25  
26  
27  
28

1                   **SUPPLEMENTAL CASE MANAGEMENT STATEMENT**

2                   Pursuant to Fed. R. Civ. Proc. 26(f) and Northern District of California Local Rule 16-9,  
 3 plaintiff Verigy US, Inc. (“Verigy”) hereby submits the following Supplemental Case  
 4 Management Statement updating the Court as to any material changes since the last case  
 5 management statement. Pursuant to Local Rule 16-9(a), Verigy’s counsel made reasonable efforts  
 6 to obtain Defendants’ cooperation in filing a joint statement, but defendants did not even respond  
 7 to Verigy’s request. Verigy’s efforts are set forth in the accompanying declaration of Melinda  
 8 Morton.

9                   **1. THE PARTIES:**

10                  Wesley Mayder is now represented by Russo & Hale LLP. The remaining defendants  
 11 (Romi Mayder, Silicon Test Systems, Inc., and Silicon Test Solutions, LLC) (the “STS  
 12 Defendants”) continue to be represented by Mount & Stoelker.

13                  **2. MOTIONS:**

14                  Verigy obtained a preliminary injunction order on February 29, 2008. Verigy has a  
 15 pending motion for contempt that was heard on April 11, 2008. Verigy also has a pending motion  
 16 for a protective order and for sanctions against Defendants for serving 278 requests for admission  
 17 given that the Court had ordered that only “limited discovery” be conducted, and that 244 of the  
 18 requests concerned Plaintiff’s Initial 2019.210 disclosure that Defendants knew would be  
 19 amended the very next day after service of the requests for admission. In addition, Verigy  
 20 anticipates filing a motion or motions for summary judgment or summary adjudication and  
 21 discovery motions as necessary.

22                  **3. AMENDMENT OF PLEADINGS**

23                  Verigy may amend its pleading to add additional parties and/or new claims. Verigy  
 24 proposes June 6, 2008 as the deadline for adding new claims and parties. Verigy also notes that as  
 25 Defendants failed to serve a complete pleading when amending their answer as required by the  
 26 Federal Rules and the Local Civil Rules. A “corrected” answer and counterclaim was served  
 27 today. This “corrected” pleading violates F.R.C.P. 15, as it was filed long after the deadline set in  
 28 the Court’s February 29, 2008 Order, and Defendants did not ask Verigy for written permission or

1 petition the Court for leave to amend. Verigy anticipates that Defendants will want to remedy this  
 2 situation.

3 **4. DISCOVERY:**

4 Verigy agrees to the limitations set forth in the Federal Rules of Civil Procedure.  
 5 Specifically, Verigy proposes that there should be ten depositions per side pursuant to F.R.C.P. 30  
 6 (a)(2)(a) and a limit of 25 interrogatories per party pursuant to F.R.C.P. 33(a). Verigy proposes a  
 7 limit of 66 requests for admission per side excluding requests relating to authenticity of  
 8 documents. Defendants have already served 343 Requests for Admission during a time when the  
 9 Court ordered only "limited discovery," and Verigy believes that the STS Defendants will  
 10 continue to propound abusive discovery unless a limit is placed. Verigy proposes the following  
 11 "clawback" agreement and requests that the Court include this agreement in the CMC Order:

12 The inadvertent disclosure of any document which is subject to a legitimate claim  
 13 that the document should have been withheld from disclosure as Protected Material  
 14 shall NOT waive any privilege or other applicable protective doctrine for that  
 15 document or for the subject matter of the inadvertently disclosed document if the  
 16 producing party, upon becoming aware of the disclosure, promptly requests its  
 17 return and takes reasonable precautions to avoid such inadvertent disclosure.  
 18 Except in the event that the requesting party disputes the claim, any documents  
 19 which the producing party deems to contain inadvertently disclosed Protected  
 20 Material shall be, upon written request, promptly returned to the producing party or  
 21 destroyed at the producing party's option. This includes all copies, electronic or  
 22 otherwise, of any such documents. In the event that the producing party requests  
 23 destruction, the requesting party shall provide written certification of compliance  
 24 within thirty (30) days of such written request. In the event that the requesting  
 25 party disputes the producing party's claim as to the protected nature of the  
 26 inadvertently disclosed material, a single set of copies may be sequestered and  
 27 retained by and under the control of requesting party for the sole purpose of  
 28 seeking court determination of the issue pursuant to Federal Rule of Civil  
 Procedure 26(b)(5)(B). Any such Protected Material inadvertently disclosed by the  
 producing party to the requesting party pursuant to this Agreement, shall be and  
 remain the property of the producing party. To the extent there may be  
 inconsistency between this agreement, Federal Rule of Civil Procedure 26(b)(5)  
 and the accompanying Committee Note, Rule 26(b)(5)(B) and the Committee Note  
 shall control.

Verigy's proposed discovery schedule is included in the Schedule below in Section 6.

25

26

27

28

1   **5. RELIEF:**

2       Verigy notes that Defendants still have not fully complied with paragraph 11 of the  
 3       Northern District Standing Order re: Contents of Joint Case Management Statement, and requests  
 4       that the Court order Defendants to file and serve a document describing the “bases on which  
 5       [Defendants] contend[] damages should be calculated if liability is established” against  
 6       Defendants for the eleven causes of action other than trade secrets for which Verigy seeks  
 7       damages. (N.D. Cal. Standing Order re: Contents of Joint Case Management Statement.) The  
 8       Court’s March 14, 2008 Order indicated that the Court would “look into the issue of listing  
 9       damages as stated in the standing order.”

10      **6. SCHEDULING**

11       Plaintiff proposes the following revised Schedule:

12           EVENT	13           PLAINTIFF'S 14           REVISED 15           SUGGESTED 16           DATE	17           PLAINTIFF'S 18           PREVIOUS 19           SUGGESTED DATE 20           (November 30, 2007 21           Joint CMC statement)	22           DEFENDANTS' 23           PREVIOUS 24           SUGGESTED 25           DATE (November 26           30, 2007 Joint CMC statement)
Deadline for Initial Disclosures	November 30, 2007	November 30, 2007	November 30, 2007
Last Day to Amend Pleadings by Adding New Claims or New Parties	June 6, 2008	January 15, 2008	30 days after courts order regarding preliminary injunction
Close of Fact Discovery	September 26, 2008	May 23, 2008	May, 29 2009
Last Day to serve Expert Disclosures pursuant to F.R.C.P. 26(a)(2)	October 17, 2008	June 13, 2008	June 30, 2009
Close of Expert Discovery	November 21, 2008	July 15, 2008	July 31, 2009
Last Day to File Dispositive Motions	January 9, 2009	August 22, 2008	September 11, 2009
Last Day to File Pretrial Disclosures pursuant to F.R.C.P. 26(a)(3)(c)	March 20, 2009	October 31, 2008	November 13, 2009
Pretrial Conference	April 2, 2009	November 13, 2008	November 27, 2009
Trial	April 21, 2009	December 1, 2008	December 14, 2009

1 Verigty specifically objects to Defendants' request for 260 interrogatories and for 10  
2 depositions per party. The limits imposed by the F.R.C.P should be applied here, and if  
3 Defendants need additional discovery, they should petition the Court for leave at that time. Verigty  
4 previously requested that a limit of 30 RFAs per party (excluding requests related to authenticity  
5 of documents) be entered in this case. A limit is especially important given Defendants' recent  
6 actions. Despite the Court's March 14, 2008 Order allowing only limited discovery, Defendants  
7 served 343 requests for admission in less than two weeks in April 2008. Defendants also served a  
8 third request for documents in violation of the March 14, 2008 Order. Given that Verigty has  
9 already responded to Defendants' first set of Requests for Admission, totaling 66 requests, Verigty  
10 amends its previous request and asks that a limit of 66 RFAS per party (excluding requests related  
11 to authenticity of documents) be entered in this case. Eighteen months is much too long for  
12 discovery and would result only in a delay of trial in this action. There are only a few parties  
13 involved in this action and most, if not all, documents and potential witnesses are located in the  
14 Bay Area.

15

16 Dated: May 16, 2008

BERGESON, LLP

17

By: \_\_\_\_\_ /s/

18 Melinda M. Morton  
19 Attorneys for Plaintiff  
VERIGY US, INC.  
20  
21  
22  
23  
24  
25  
26  
27  
28